IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 198 OF 2004

Raosaheb Shankar Khandekar
(Since deceased through heirs)
Smt. Akkatai Raosaheb Khandekar
and 3 ors. ... Appellants

V/s

1. Sou Alka Raju Durge & ors. ... Respondents

Mr. S.M. Railkar for the appellants.

Mr. N.J. Patil for Respondent Nos. 1, 3, 4 & 5.

CORAM: P.V. KAKADE, J.

DATED: 7TH JUNE, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the 5th Addl. District Judge, Kolhapur, dated 15.11.2003 dismissing their appeal as well as the cross-objection filed by the respondents and confirming the judgment of the Trial Court in Civil Suit No. 163 of 1994 decreeing the suit for partition and separate possession.

2. The suit was filed by the plaintiff for partition of agricultural land as well as house property on the

ground that those were ancestral properties and plaintiff had 1/6 share in the said property. The defendants resisted the suit on the ground that the oral partition had earlier taken place and consequently the mutation entries were effected and hence the suit was not maintainable.

The Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the property was joint Hindu Family property and the plaintiff had 1/6 share in respect of properties at 1-A, 1-B (3, 4).

The appeal was carried to the District Court. The respondents also filed the corss-objection with regard to the part of the order passed against them.

After hearing both sides, the lower appellate Court Judge dismissed the appeal as well as the cross-objection and confirmed the order passed by the lower Court. Hence the present appeal.

3. At the outset, it may be noted that there is no substantial question of law involved in this appeal at all. The learned counsel for the appellants sought to

rely upon a so-called admission of the respondent in the course of the deposition in order to establish that there were earlier oral partitions between the parties and on that basis it was submitted that the appeal deserves to be admitted. However, perusal of the document of the deposition itself shows that the so-called admission was not admission at all but it was clear-cut denial to the suggestion to the effect that property was earlier partitioned. Therefore, I am satisfied that it is not a case of wrong appreciation of the available evidence. Besides this aspect, there is no substantial question of law involved in this appeal. Both the Courts below are seen to have properly appreciated the available evidence and have drawn proper and legal conclusion, hence, it would brook no interference.

4. In the result, the appeal stands dismissed. Consequently, the Civil Application No. 318 of 2004 also stands dismissed and ad-interim relief granted therein stands vacated.

(P. V. Kakade, J.)